

## OPINION SUMMARY

### MISSOURI COURT OF APPEALS EASTERN DISTRICT

#### DIVISION THREE

STATE OF MISSOURI,	)	No. ED103418
	)	
Respondent,	)	Appeal from the Circuit Court
	)	of the City of St. Louis
vs.	)	1422-CR01649-01
	)	
JASON BROWNLEE,	)	Honorable Steven R. Ohmer
	)	
Appellant.	)	Filed: June 28, 2016

Jason Brownlee (“Defendant”) appeals the judgment entered upon a jury verdict convicting him of one count of unlawful possession of a firearm pertaining to the possession of a .38 caliber revolver (“.38 caliber revolver”). On appeal, Defendant argues there was insufficient evidence to support his conviction. Defendant also asserts the trial court erred in failing to declare a mistrial sua sponte during the prosecutor’s closing argument, after the prosecutor repeatedly referred to the existence of a gun problem in the City of St. Louis (“City”), and the prosecutor repeatedly referred to a defense witness’s alleged trial testimony concerning prior inconsistent statements she allegedly made to a defense investigator. Finally, Defendant claims the trial court erred in admitting Exhibits 14-17 into evidence, which were pictures of marijuana, drugs, and a scale; marijuana in a toilet; and a .45 caliber handgun Defendant was not charged with unlawfully possessing or using.

AFFIRMED.

#### Division Three holds:

- (1) Based on the law defining possession and our standard of review, the State presented sufficient evidence from which a reasonable juror could have found, beyond a reasonable doubt, that Defendant had possession of the .38 caliber revolver.
- (2) The prosecutor’s comments in closing argument referring to the existence of a gun problem in the City were within the parameters of permissible argument because they concerned the prevalence of crime in the community, the personal safety of its residents, the necessity of law enforcement to deter crime, and the evils that may befall society if the jury failed its duty. The prosecutor’s argument in this regard did not need to be supported by specific evidence in the record but permissibly called upon the juror’s common experience. Moreover, similar arguments have been found to be permissible by this Court and the Western District. Accordingly, the trial court did not plainly err in failing to declare a mistrial sua sponte with respect to this portion of the prosecutor’s argument.

- (3) The prosecutor's closing arguments regarding the defense witness's prior inconsistent statements she allegedly made to the defense investigator went beyond the evidence presented at trial, and therefore, they were improper. Nevertheless, we find Defendant has not demonstrated the prosecutor's comments had a decisive effect on the outcome of the trial, amounting to a manifest injustice or miscarriage of justice. Therefore, the trial court did not commit reversible error in failing to declare a mistrial sua sponte with respect to this portion of the prosecutor's argument.
- (4) There is not a reasonable probability the trial court's admission of Exhibits 14-17 affected the outcome of the trial, and the objectionable evidence was merely cumulative of other evidence admitted without objection and which sufficiently established essentially the same facts. Accordingly, Defendant has not demonstrated he was prejudiced by the admission of Exhibits 14-17 or that the trial court committed reversible error in admitting the exhibits.

Opinion by: Robert M. Clayton III, P.J.  
Lawrence E. Mooney, J., and James M. Dowd, J., concur.

Attorney for Appellant: Randall Brachman

Attorney for Respondent: Chris Koster and Dora A. Fichter

**THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.**